

FILED

UNITED STATES DISTRICT COURT
LAS CRUCES, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT

FEB 01 2018



FOR THE DISTRICT OF NEW MEXICO

MATTHEW J. DYKMAN
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 15-4268 JB

ANGEL DELEON, JOE LAWRENCE
GALLEGOS, EDWARD TROUP, a.k.a.
"Huero Troup," LEONARD LUJAN,
BILLY GARCIA, a.k.a. "Wild Bill,"
EUGENE MARTINEZ, a.k.a. "Little
Guero," ALLEN PATTERSON,
CHRISTOPHER CHAVEZ, a.k.a. "Critter,"
JAVIER ALONSO, a.k.a. "Wineo,"
ARTURO ARNULFO GARCIA, a.k.a.
"Shotgun," BENJAMIN CLARK, a.k.a.
"Cyclone," RUBEN HERNANDEZ;
JERRY ARMENTA, a.k.a. "Creeper,"
JERRY MONTOYA, a.k.a. "Boxer,"
MARIO RODRIGUEZ, a.k.a. "Blue,"
TIMOTHY MARTINEZ, a.k.a. "Red,"
MAURICIO VARELA, a.k.a. "Archie,"
a.k.a. "Hog Nuts," DANIEL SANCHEZ,
a.k.a. "Dan Dan," GERALD ARCHULETA,
a.k.a. "Styx," a.k.a. "Grandma," CONRAD
VILLEGAS, a.k.a. "Chitmon," ANTHONY
RAY BACA, a.k.a. "Pup," ROBERT
MARTINEZ, a.k.a. "Baby Rob," ROY
PAUL MARTINEZ, a.k.a. "Shadow,"
CHRISTOPHER GARCIA, CARLOS
HERRERA, a.k.a. "Lazy," RUDY PEREZ,
a.k.a. "Ru Dog," ANDREW GALLEGOS,
a.k.a. "Smiley," SANTOS GONZALEZ;
PAUL RIVERA, SHAUNA GUTIERREZ,
and BRANDY RODRIGUEZ,

Defendants.

COURT'S FIRST PROPOSED JURY INSTRUCTIONS

(with citations)

Handwritten signature

UNITED STATES' PROPOSED JURY INSTRUCTION NO. 1

Members of the Jury:

In any jury trial there are, in effect, two judges. I am one of the judges, you are the other. I am the judge of the law. You, as jurors, are the judges of the facts. I presided over the trial and decided what evidence was proper for your consideration. It is also my duty at the end of the trial to explain to you the rules of law that you must follow and apply in arriving at your verdict.

In explaining the rules of law that you must follow, first, I will give you some general instructions which apply in every criminal case ^(#--#) for example, instructions about burden of proof and insights that may help you to judge the believability of witnesses. Then I will give you some specific rules of law that apply to this particular case and, finally, I will explain the procedures you should follow in your deliberations, and the possible verdicts you may return. These instructions will be given to you for use in the jury room, so you need not take notes.

Tenth Circuit Pattern Jury Instructions

Criminal

1.03

(2011)

(Introduction to Final Instructions)

All go / No bid

at 7

All go / No bid

Updated July 2017

*Criminal Pattern Jury Instructions
Committee of the U.S. District Court
of the District of Columbia*

PROPOSED JURY INSTRUCTIONS

UNITED STATES' PROPOSED

JURY INSTRUCTIONS NO. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100
(Doc. 1635) (modified)

*All go
BU
will*

X

~~Case 2:15-cr-04268-JB Document 1635 Filed 01/12/18 Page 3 of 66~~

~~UNITED STATES' PROPOSED~~ JURY INSTRUCTION NO. 2

#--#

You, as jurors, are the judges of the facts. But in determining what actually happened that is, in reaching your decision as to the facts it is your sworn duty to follow all of the rules of law as I explain them to you.

#--#

You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I explain it to you, regardless of the consequences. However, you should not read into these instructions or anything else I may have said or done, any suggestion as to what your verdict should be. That is entirely up to you.

It is also your duty to base your verdict solely upon the evidence, without prejudice or sympathy. That was the promise you made and the oath you took.

Tenth Circuit Pattern Jury Instructions Criminal 1.04 (2011) (Duty to Follow Instructions)

Criminal Pattern Jury Instructions Committee of the
US Sentencing Ct. of Appeals & the Tenth Ct.

PROPOSED JURY INSTRUCTIONS

UNITED STATES' PROPOSED JURY INSTRUCTION
No. 2

at 1, 2, 3, 4 Aug 12, 2018 (Doc 1635) (modified)

All go
No Rule

All go
B

Adm

UNITED STATES' PROPOSED JURY INSTRUCTION NO. 5

The government has the burden of proving ~~the~~ ^{cp} defendants guilty beyond a reasonable doubt. The law does not require a defendant to prove his innocence or produce any evidence at all. The government has the burden of proving ~~a~~ ^{their} defendant guilty beyond a reasonable doubt, and if it fails to do so, you must find ~~that defendant~~ not guilty.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of ~~the~~ defendant's guilt. There are few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A reasonable doubt is a doubt based on reason and common sense after careful and impartial consideration of all the evidence in the case. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find ~~him~~ ^(the) guilty. If on the other hand, you think there is a real possibility that he is not guilty, you must give ~~him~~ ^(the) the benefit of the doubt and find ~~him~~ not guilty. (adpts)

Criminal
Pattern
Jury
Instructions
Committee
of the
1st Cir.
Advisory
Comm.
on
the
Tol
Ct.

Fifth Circuit Pattern Jury Instructions (Criminal 1.05 (2011)) (Presumption of Innocence - Burden of Proof/Reasonable Doubt)

Edith Lyndale Jones 2017
at 9
Call up / Bk

Mr. Sanchez, Mr. Baca, Mr. Herrera, at Mr. Pong

Mr. Sanchez, Mr. Baca, Mr. Herrera, at Mr. Pong

Daniel Sanchez, Anthony Ray Baca, Carlos Herrera, and Rudy Pong

Call up / Bk
with

Call up / Bk

PROPOSED JURY INSTRUCTIONS

INSTRUCTION NO. 5

(modified)

UNITED STATES' PROPOSED JURY

at 1, 17, & Aug 12, 2018 (Doc. 1635)

Aug
n

UNITED STATES PROPOSED JURY INSTRUCTION NO. 3

Defendants Daniel Sanchez, Anthony Ray Baca, Christopher Garcia, Carlos Herrera, and Rudy Perez are on trial before you upon an Indictment brought by the Grand Jury. Before reading the indictment to you, I remind you that the Indictment or formal charge against a defendant is not evidence of guilt. Indeed, a defendant is presumed by the law to be innocent.

In this case, the Indictment charges as follows:

INTRODUCTORY ALLEGATIONS

THE RACKETEERING ENTERPRISE, SYNDICATO DE NUEVO MEXICO GANG

1. At various times relevant to this Second Superseding Indictment, the defendants, ANGEL DELEON, JOE LAWRENCE GALLEGOS, EDWARD TROUP, a.k.a. "Huero Troup," LEONARD LUJAN, BILLY GARCIA, a.k.a. "Wild Bill," EUGENE MARTINEZ, a.k.a. "Little Guero," ALLEN PATTERSON, CHRISTOPHER CHAVEZ, a.k.a. "Critter," JAVIER ALONSO, a.k.a. "Wineo," ARTURO ARNULFO GARCIA, a.k.a. "Shotgun," BENJAMIN CLARK, a.k.a. "Cyclone," RUBEN HERNANDEZ, JERRY ARMENTA, a.k.a. "Creeper," JERRY MONTOYA, a.k.a. "JR," a.k.a. "Plaz," MARIO RODRIGUEZ, a.k.a. "Blue," TIMOTHY MARTINEZ, a.k.a. "Red," ANTHONY RAY BACA, a.k.a. "Pup," ROBERT MARTINEZ, a.k.a. "Baby Rob," ROY PAUL MARTINEZ, a.k.a. "Shadow," MAURICIO VARELA, a.k.a. "Archie," a.k.a. "Hog Nuts," DANIEL SANCHEZ, a.k.a. "Dan Dan," GERALD ARCHULETA, a.k.a. "Styx," a.k.a. "Grandma," CONRAD VILLEGAS, a.k.a. "Chitmon," CHRISTOPHER GARCIA, CARLOS HERRERA, a.k.a. "Lazy," RUDY PEREZ, a.k.a. "Ru Dog," ANDREW GALLEGOS, a.k.a. "Smiley," SANTOS GONZALEZ, PAUL RIVERA, SHAUNA GUTIERREZ and BRANDY RODRIGUEZ, and others were members/prospects/associates of the Syndicato de Nuevo Mexico Gang (SNM), a criminal

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- d. It was further part of the means and methods of the enterprise that members and associates of the enterprise concealed from law enforcement the way in which the enterprise conducted its affairs; the locations where enterprise members discussed and conducted the affairs of the enterprise; the locations where enterprise members stored and possessed weapons and narcotics; and the locations where enterprise members maintained the proceeds from narcotics trafficking.
- e. Members of the SNM Gang also used violence to impose discipline within the SNM Gang. It was further part of the means and methods of the enterprise that the defendants and other members and associates of the SNM Gang agreed to distribute narcotics and commit other crimes, and to conceal their criminal activities by obstructing justice, threatening and intimidating witnesses, and other means.

14. The SNM gang enterprise, through its members and associates, engaged in racketeering activity as defined in 18 U.S.C. §§ 1959(b)(1) and 1961(1), that is acts and threats involving murder and robbery in violation of New Mexico law, acts indictable under 18 U.S.C. §§ 1503, 1512 and 1513 involving obstruction of justice, tampering with or retaliating against a witness, victim, or informant, and offenses involving trafficking in narcotics in violation of 21 U.S.C. §§ 841 and 846.

Count ~~X~~

Conspiracy to Murder J.M.

~~Paragraphs one through fourteen of this Second Superseding Indictment are re-alleged and incorporated by reference as though fully set forth herein.~~



Jul me

In March 2014, in Doña Ana County, in the District of New Mexico and elsewhere, as consideration for the receipt of, and as consideration for a promise and agreement to pay, anything of pecuniary value from the Sindicato de Nuevo Mexico Gang (SNM), and for the purpose of gaining entrance to and maintaining and increasing position in the Sindicato de Nuevo Mexico Gang (SNM), an enterprise engaged in racketeering activity, the defendants, JERRY ARMENTA, a.k.a. "Creeper," JERRY MONTOYA, a.k.a. "JR," a.k.a. "Plaz," MARIO RODRIGUEZ, a.k.a. "Blue," TIMOTHY MARTINEZ, a.k.a. "Red," ANTHONY RAY BACA, a.k.a. "Pup," MAURICIO VARELA, a.k.a. "Archie," a.k.a. "Hog Nuts," DANIEL SANCHEZ, a.k.a. "Dan Dan," CARLOS HERRERA, a.k.a. "Lazy," and RUDY PEREZ, a.k.a. "Ru Dog," and others known and unknown to the grand jury, did unlawfully, knowingly, and intentionally conspire to murder J.M., in violation of NMSA 1978, Sections 30-2-1 and 30-28-2.

All in violation of 18 U.S.C. § 1959(a)(5).

Count ² X

Murder of J.M.

~~Paragraphs one through fourteen of this Second Superseding Indictment are re-alleged and incorporated by reference as though fully set forth herein.~~

On or about March 7, 2014, in Doña Ana County, in the District of New Mexico, as consideration for the receipt of, and as consideration for a promise and agreement to pay, anything of pecuniary value from the Sindicato de Nuevo Mexico Gang (SNM), and for the purpose of gaining entrance to and maintaining and increasing position in the Sindicato de Nuevo Mexico Gang (SNM), an enterprise engaged in racketeering activity, the defendants, JERRY ARMENTA, a.k.a. "Creeper," JERRY MONTOYA, a.k.a. "JR," a.k.a. "Plaz," MARIO

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~~Case 2:15-cr-04268-JB Document 1635 Filed 01/12/18 Page 13 of 66~~

RODRIGUEZ, a.k.a. "Blue," TIMOTHY MARTINEZ, a.k.a. "Red," ANTHONY RAY BACA, a.k.a. "Pup," MAURICIO VARELA, a.k.a. "Archie," a.k.a. "Hog Nuts," DANIEL SANCHEZ, a.k.a. "Dan Dan," CARLOS HERRERA, a.k.a. "Lazy," and RUDY PEREZ, a.k.a. "Ru Dog," did unlawfully, knowingly and intentionally murder J.M., in violation of NMSA 1978, Sections 30-2-1 and 30-1-13.

All in violation of 18 U.S.C. §§ 1959(a)(1) and 2.

³
Count ~~8~~

Conspiracy to Commit Assault Resulting in Serious Bodily Injury to J.R.

~~Paragraphs one through fourteen of this Second Superseding Indictment are re-alleged and incorporated by reference as though fully set forth herein.~~


Starting in or about 2003, and continuing until on or about July 13, 2015, in Doña Ana County, in the District of New Mexico, and elsewhere, as consideration for the receipt of, and as consideration for a promise and agreement to pay, anything of pecuniary value from the Sindicato de Nuevo Mexico Gang (SNM), and for the purpose of gaining entrance to and maintaining and increasing position in the Sindicato de Nuevo Mexico Gang (SNM), an enterprise engaged in racketeering activity, the defendants, ANTHONY RAY BACA, a.k.a. "Pup," GERALD ARCHULETA, a.k.a. "Styx," a.k.a. "Grandma," and CONRAD VILLEGAS, a.k.a. "Chitmon," did unlawfully, knowingly, and intentionally conspire to commit assault resulting in serious bodily injury to J.R., in violation of NMSA 1978, Sections 30-3-5 and 30-28-

2.

~~All in violation of 18 U.S.C. § 1959(a)(6).~~

⁴
Count ~~8~~

Conspiracy to Murder D.S. #


~~Paragraphs one through fourteen of this Second Superseding Indictment are re-alleged~~
~~and incorporated by reference as though fully set forth herein.~~ 

Starting on a date uncertain, but no later than 2013, and continuing to on or about the date of this Second Superseding Indictment, in Santa Fe County, in the District of New Mexico, and elsewhere, as consideration for the receipt of, and as consideration for a promise and agreement to pay, anything of pecuniary value from the Sindicato de Nuevo Mexico Gang (SNM), and for the purpose of gaining entrance to and maintaining and increasing position in the Sindicato de Nuevo Mexico Gang (SNM), an enterprise engaged in racketeering activity, the defendants, **ANTHONY RAY BACA, a.k.a. "Pup," ROY MARTINEZ, a.k.a. "Shadow," and ROBERT MARTINEZ, a.k.a. "Baby Rob,"** and others known and unknown to the grand jury, did unlawfully, knowingly, and intentionally conspire to murder D.S., in violation of NMSA 1978, Sections 30-2-1 and 30-28-2.

All in violation of 18 U.S.C. § 1959(a)(5).

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Count ~~X0~~

Conspiracy to Murder G.M.

~~Paragraphs one through fourteen of this Second Superseding Indictment are re-alleged~~
~~and incorporated by reference as though fully set forth herein.~~ 

Starting on a date uncertain, but no later than 2013, and continuing to on or about the date of this Second Superseding Indictment, in Santa Fe County, in the District of New Mexico, and elsewhere, as consideration for the receipt of, and as consideration for a promise and agreement to pay, anything of pecuniary value from the Sindicato de Nuevo Mexico Gang (SNM), and for the purpose of gaining entrance to and maintaining and increasing position in the Sindicato de Nuevo Mexico Gang (SNM), an enterprise engaged in racketeering activity, the defendants,



ANTHONY RAY BACA, a.k.a. "Pup," ROY MARTINEZ, a.k.a. "Shadow," ROBERT MARTINEZ, a.k.a. "Baby Rob," and CHRISTOPHER GARCIA, and others known and unknown to the grand jury, did unlawfully, knowingly, and intentionally conspire to murder G.M., in violation of NMSA 1978, Sections 30-2-1 and 30-28-2.

All in violation of 18 U.S.C. § 1959(a)(5).

Count ~~11~~ ⁶

Felon in Possession of a Firearm

On or about November 29, 2015, in Bernalillo County, in the District of New Mexico, the defendant, CHRISTOPHER GARCIA, having been convicted of at least one of the following felony crimes punishable by imprisonment for a term exceeding one year:

- (1) aggravated battery (great bodily harm) (firearm enhancement),
- (2) felon in possession of a firearm, and
- (3) trafficking a controlled substance,

knowingly possessed, in and affecting commerce, a firearm.

In violation of 18 U.S.C. § 922(g).

Count ~~12~~ ⁷

Using and Carrying a Firearm During and in Relation to a Crime of Violence

On or about November 29, 2015, in Bernalillo County, in the District of New Mexico, the defendant, CHRISTOPHER GARCIA, during and in relation to a crime of violence for which the defendant may be prosecuted in a court of the United States, specifically, conspiracy to murder as charged in Count 10 of this second superseding indictment, knowingly used and carried a firearm.

~~In violation of 18 U.S.C. § 924(c).~~



all up / Blk / wh

PROPOSED JURY INSTRUCTIONS

UNITED STATES PROPOSED JURY INSTRUCTION

NO. 3

, at 4-15, fl Aug 12, 2018

(Doc. 1635)(modif)

all up
Bl

1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,
12a, 12b, 12c, 12d, 12e, 12f,
13a, 13b, 13c, 13d, 13e, 14,

Second Signers

Cat 6, Cat 7, Cat 8, Cat 9,

Indict at @ - 9

March @ ~~2018~~

fl ~~_____~~ - 9, 2018
(modif)

(Doc. 947)

Cat 10,

all up / Bl

UNITED STATES' PROPOSED JURY INSTRUCTION NO.

4

, d 16, fl Jan 12, 2018 (Doc. 16)(modif)

PROPOSED JURY INSTRUCTIONS

12-13

all up / Bl / wh

~~UNITED STATES' PROPOSED~~ JURY INSTRUCTION NO. 23

When the word "knowingly" is used in these instructions, it means that the act was done voluntarily and intentionally, and not because of mistake or accident. Although knowledge on the part of ~~the defendant~~ cannot be established merely by demonstrating that ~~the defendant~~ was negligent, careless, or foolish, knowledge can be inferred if ~~the defendant~~ deliberately blinded himself to the existence of a fact. Knowledge can be inferred if ~~the defendant~~ was aware of a high probability of the existence of [the fact in question], unless ~~the defendant~~ did not actually believe [the fact in question].

~~Tenth Circuit~~ Pattern Jury Instructions (Criminal) 137 (2011) (Knowingly).

Mr. Sandy, Mr. Bace,
Mr. Hovner, & Mr. Pao

Call up / Bl / U

PROPOSED JURY INSTRUCTIONS

JURY ~~INSTR~~ INSTRUCTION NO. 23

2018 (Dec. 16/25) (mhp)

UNITED STATES' PROPOSED

at 1,40, fl for Q.12,

Civil Path of Last Call of the
W. St. of April 1st to 1st
et,

Criminal Path for the Court of the US District Court of the District of Columbia
Ct,

UNITED STATES' PROPOSED JURY INSTRUCTION NO. 22

You will note that the indictment charges that each offense was committed "on or about"
a particular date or range of dates. The government does not have to prove that the crime was
committed on the exact date or dates specified in the indictment, so long as the government
proves beyond a reasonable doubt that the defendant committed the crime on a date reasonably
near the date or dates alleged in the indictment.

Tenth Circuit Pattern Jury Instructions (Criminal) 1.18 (2011) (On or About) (Modified) here

Mr. Sisk
Mr. Baca, Mr. Herrera,
at Mr. Perez

March 2014; the crime
charge is Oct 8 was
conclude "on or alt"
Oct 8, before 2003
at July 13, 2015;
the crime date is Oct 9
at 10 was conclude
"on or alt" no later
the 2012.

charge is Oct 6 at
Oct 7

March 2014 (f Oct 8 6 at Oct 7);
before 2003 at July 13,
2015 (f Oct 8 2015); at
no later the 2013 (Oct 9 at Oct 10).

PROPOSED JURY INSTRUCTIONS

**UNITED STATES' PROPOSED JURY
INSTRUCTION NO. 22**, at 1, 39,
of July 12, 2018 (Doc. 1635)